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06 UNITED STATES DISTRICT COURT  
07 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 JAMES H. CARNER, III, ) CASE NO. C07-1646-JLR-MAT  
09 Plaintiff, )  
10 v. ) ORDER DISMISSING ONE  
11 DR. BEN SANDERS, ) DEFENDANT AND DIRECTING  
12 Defendant. ) SERVICE BY MAIL ON REMAINING  
13 ) DEFENDANT  
14 )

15 Plaintiff is a former inmate of the King County Correctional Facility (“KCCF”) in Kent,  
16 Washington and has filed this action pursuant to 42 U.S.C. § 1983. On November 5, 2007, United  
17 States Magistrate Judge Mary Alice Theiler granted plaintiff leave to file an amended complaint  
18 because the original complaint was deficient in several respects. (Dkt. No. 10). On November  
19 27, 2007, plaintiff filed an amended complaint. (Dkt. No. 13). Having reviewed the amended  
20 complaint, and the balance of the record, the Court does hereby find and ORDER as follows:

21 (1) Dismissal of Claim Against Brian O’Farrell

22 In the amended complaint, plaintiff alleges that Brian O’Farrell, the Classifications  
Supervisor at KCCF, violated his due process rights, apparently by interfering with plaintiff’s

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ability to file the instant lawsuit. (Dkt. No. 13 at 3-4). Plaintiff also made similar allegations in his original complaint. In the Order granting plaintiff leave to amend, Judge Theiler advised plaintiff that he must either delete his claim against defendant O'Farrell or allege facts showing that O'Farrell had denied him access to the courts. (Dkt. No. 10 at 2). In his amended complaint, plaintiff has failed to make any concrete allegations against O'Farrell, and indeed, the fact that this lawsuit is proceeding seems to refute his asserted denial of due process. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996) (plaintiff must allege that he has suffered an actual injury stemming from the alleged constitutional violation, a jurisdictional requirement that flows from standing doctrine and may not be waived). Accordingly, plaintiff's allegations regarding defendant O'Farrell do not state a claim for relief and plaintiff's claim against this particular defendant is DISMISSED under 28 U.S.C. § 1915(e)(2)(B)(ii).

(2) Service by Clerk on Remaining Defendant

As to the remaining defendant, it is hereby ORDERED that the Clerk send Dr. Ben Sanders the following by first class mail: a copy of the amended complaint and of this Order, two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. The Clerk shall also mail a copy of the amended complaint together with a copy of this Order to the King County Prosecuting Attorney's Office, by first class mail. Defendant shall have **thirty days** within which to return the attached Waiver of Service of Summons.

(3) Response Required

If defendant timely returns the signed Waiver of Service of Summons, he shall have **sixty days** after the date designated on the Notice of Lawsuit to file and serve an answer to the

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complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure. If defendant fails to timely return the signed Waiver of Service of Summons, he will be personally served with a summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under Rule 12 within **thirty days** after service.

(4) Filing and Service by Parties, Generally

All attorneys admitted to practice before this Court are required to file documents electronically via the Court's CM/ECF system. Additionally, any document filed with the Court must be accompanied by proof that it has been served upon all parties that have entered a notice of appearance in the underlying matter. Counsel are directed to the Court's website – [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov) – for a detailed description of the requirements for filing via CM/ECF.

All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original of any document for the Court's consideration. **For any party filing electronically, when the total of all pages of a filing exceeds fifty (50) pages in length, a paper copy of the document (with tabs or other organizing aids as necessary) shall be delivered to the Clerk's Office for chambers. The chambers copy must be clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers." All filings, whether filed electronically or in traditional paper format, must indicate in the upper right hand corner the name of the Magistrate Judge to whom the document is directed.**

(5) Motions

Any request for Court action shall be set forth in a motion, properly filed and served. A party must file with the motion a supporting memorandum. The motion shall include in its caption

(immediately below the title of the motion) a designation of the Friday upon which the motion is to be noted upon the Court's calendar. That date shall be the third Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the Monday immediately preceding the Friday designated for consideration of the motion. If a party fails to file and serve timely opposition to a motion, the Court may deem any opposition to be without merit. The party making the motion may file, not later than the Friday designated for consideration of the motion, a response to the opposing party's briefs and affidavits.

Plaintiff is advised, pursuant to *Klinge v. Eikenberry*, 849 F. 2d 409 (9th Cir. 1988), that if defendants file a motion for summary judgment, any response must comply with the requirements of Federal Rule of Civil Procedure 56. This rule requires that the party opposing summary judgment must submit affidavits or other evidence in opposition to the motion to establish that there are issues of material fact and that the movant is not entitled to judgment as a matter of law. Plaintiff may not merely rest on the allegations in the pleadings. Pursuant to Local Rule CR 7(b)(4), failure to file necessary documents in opposition to a motion for summary judgment may be deemed by the Court to be an admission that opposition is without merit.

Plaintiff is further advised, pursuant to *Rand v. Rowland*, 113 F. 3d 1520, 1524 (9th Cir. 1997), that should he fail to contradict a motion for summary judgment with counter-affidavits or other competent evidence, the moving party's evidence may be taken as the truth, and final judgment may be entered without a full trial.

01 (6) Direct Communications with District Judge or United States Magistrate Judge

02 It is further ORDERED that no direct communication is to take place with the District  
03 Judge or Magistrate Judge with regard to this case. All relevant information and papers are to  
04 be directed to the Clerk.

05 (7) The Clerk is directed to send a copy of this Order and of the General Order to  
06 plaintiff.

07 DATED this 4th day of December, 2007.

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10 JAMES L. ROBART  
11 United States District Judge

12  
13 Recommended for Entry  
14 this 3rd day of December, 2007.

14 s/ Mary Alice Theiler  
15 United States Magistrate Judge